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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-206

COLQUITT COUNTY BOARD OF EDUCATION, et al.,
Petitioner,

versus

WILMA JOYCE HARRINGTON, et al.
and E. E. REID, JR., et al.,
Respondents.

On Petition For Writ Of Certiorari To The
United States Court of Appeals for the Fifth Circuit

BRIEF OF RESPONDENTS E. E. REID, JR., ET AL. IN OPPOSITION

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OPINION BELOW

The opinion delivered in the court below is not as yet officially reported, but is appended as Exhibit "A" to the Petition for Writ of Certiorari.

JURISDICTION

Respondents E. E. Reid, Jr., et al., do not question the jurisdiction as set forth in the Petition.

QUESTION PRESENTED

Respondents E. E. Reid, Jr., et al., set forth the question presented as follows:

Was the Court of Appeals correct in ordering adoption of the Intervenors' Plan to desegregate the Colquitt County schools, all part of a single school district, and in holding that the School Board's Plan

(a) Did not comply with the principles set forth in *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 26 (1971); and

(b) Did not convert the school system from a dual to a unitary system under the following facts:

A. Of ten elementary schools reasonably involved, five within the city limits of Moultrie and five without, the five without were left predominantly white (82.4% white to 99.58% white).

B. The city limits of Moultrie, Georgia has not been changed for 20 years and is not a natural boundary for division of racial percentages in the schools.

C. Under the Intervenors' Plan

(1) All schools of predominantly one race are eliminated;
(2) Difference in cost is an insignificant factor;
(3) Difference in busing is an insignificant factor;
(4) The Intervenors' Plan is as educationally sound as that proposed by the School Board.

D. All members of the Board, except one, resided outside the limits of Moultrie, and the member living within the city favored changing the School Board Plan. Testimony in the record discloses racial motivation behind the School Board Plan.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondents E. E. Reid, Jr., et al., do not question the constitutional provision as set forth in the Petition.

STATEMENT

Respondents E. E. Reid, Jr., et al., amplify the statement submitted by petitioner as follows:

In this brief, Respondents E. E. Reid, Jr., et al., refer to themselves as Intervenors to be consistent with their designation in petitioners' brief.

Four of the fourteen elementary schools to which petitioners refer in their statement, that is Berlin (78% white, 22% black), Doerun (53% white, 47% black), Hamilton (74% white, 26% black), and Norman Park (76% white, 24% black), are not involved in the plan proposed either by the petitioner School Board or the Intervenors. Because the black community was centered around the Gray School, which was the predominantly black school, desegregation plans necessarily center around this school.

The five elementary schools involved in the petitioner Board Plan are the Gray, Cox, Central, Vereen, and Wright Schools, all located within the city limits of Moultrie, Georgia. The Intervenors' Plan involves the same schools and would also involve Culbertson School (99.58% white, 0.42% black); Funston School (86.17% white, 13.83% black); Okapilco School (86.92% white, 13.08% black); Reedy Creek School (82.90% white, 17.10% black), and Sunset School, (95.8% white, 4.2% black) outside the city limits of Moultrie. The Board Plan involved moving approximately 500 black students in elementary grades one through four away from the Gray School and approximately 500 white students in grades five, six and seven into the Gray School. The Intervenors' Plan involved moving approximately 600 black students in grades one through five from the Gray School and approximately 600 white students from nine schools into the Gray School.

The evidence discloses that Intervenors are persons who have done their share to foster integrated public education, who are genuinely concerned with preserving public education and the overall good of the county

and are persons who did not intervene because of private prejudice (R-182, 212-216). They contend the Board Plan is racially motivated and designed to foster a dual school system within the district. The city limits of Moultrie, Georgia has not been changed for twenty years or more. Areas around the city limits have developed substantially so that the city limits is not a natural boundary for dividing the system along racial lines. (R-91). The one member of the School Board who resided in the city limits of Moultrie would change the Board Plan (R-73, 89). The Superintendent of the system, who is an employee of the School Board, testified that some members of the Board had expressed a feeling to him that the Intervenors' Plan was better but it would be difficult to vote for it because of their constituency (R-71-72).

The School Superintendent testified that the Board had not made an in depth study of the Intervenors' Plan, but had studied its implementation from a cost standpoint (R-59). At the August, 1971 hearing before the District Court the School Board presented evidence that cost was a critical factor in carrying out Intervenors' Plan (R-259-60). At the February, 1972 hearing the evidence showed this to be completely erroneous, as the difference in cost, in the context of a $5,300,000 school budget was at most $20,000 and the 1971-72 school year would end with a surplus exceeding this figure (R-68, 94, Intervenors' Exhibit 3) even though maximum millage had not been levied as anticipated (R-260). The Superintendent also noted that in the 1971-72 school year, while operating under the School Board Plan, the trend

was for an exodus of white students from the schools located within the city limits and speculated this trend would continue (R-70, 71).

The School Superintendent testified that his educational philosophy was in line with Intervenors' Plan (R-59). A teacher, principal, and senior curriculum director all testified that Intervenors' Plan was superior educationally (R-42, 57, 82). Although various plans had been presented by the Board to the principals and administrative personnel prior to adopting the Board Plan, the plans presented involved only the integration of schools located within the city limits of Moultrie (R-33, 65, 66).

The record disclosed that the distance in minutes from the Gray School to the five schools outside the city limits of Moultrie was 9, 9, 12, 16, and 15 minutes respectively, while the distance in minutes from the Gray School to the four schools in the School Board Plan was 8, 10, 5, and 4 minutes respectively (R-150-153, 185, 186). Busing is involved in both plans and there is double busing of some elementary grade children under the Board Plan as there was in the Intervenors' Plan (R-61, 62).

That the longer busing time for elementary children could not be a serious factor to the Board is indicated by the fact that the Board felt it could not adopt Intervenors' Plan without also including the school at Doerun (R-92-93). Intervenors have no objection to including Doerun but the time and distance factors are greater at Doerun and their eighth to twelfth grades are not presently consolidated with the schools

in Moultrie (R-78, Intervenors' Exhibit 1). The longer busing time which would be required for the Doerun children if Doerun is included in any plan does not seem to concern the School Board.

REASONS FOR DENYING THE WRIT

Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 26 (1971) holds that where the school authorities' proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, it has the burden of showing that such school assignments are genuinely nondiscriminatory. It further holds that in a system with a history of segregation the need for remedial criteria warrants a presumption against schools that are substantially disproportionate in their racial composition. This court held in *Swann, supra*, that the objective is to abolish the dual system.

Davis v. Board of Schools Commissioners of Mobile County, 402 U.S. 33, (1971), citing *Swann, supra*, as authority, holds that where the District Court once finds the violation, the District Judge or school authority should make every effort to achieve the greatest possible degree of actual desegregation taking into account the practicalities of the situation. The Court of Appeals for the Fourth Circuit, sitting en banc, in interpreting *Swann, supra*, and *Davis, supra*, held that if the District Court approves a plan achieving less actual desegregation than would be achieved under an alternate proposed plan, it shall find facts that are thought to make impracticable the achieving

of a greater degree of integration especially if there remain any schools all or predominantly of one race. *Adams v. School District No. 3, Orangeburg County, South Carolina,* 444 F2nd 99, 101 (4th Circuit, 1971)

With these principles in mind, Intervenors proposed a plan which, based on all the evidence, was practical and which would achieve a unitary school system. The five additional schools which are reasonably accessible to the Gray School in Colquitt County and involved in the Intervenors' Plan presently have a white student percentage of 99%, 96%, 87%, and 82% respectively. There were approximately 10% fewer white elementary students in the schools located within the city limits of Moultrie for the 1971-72 school year than predicted by the County School Board at the time the plan was adopted. The School Superintendent conceded that under the County Board Plan that the schools located within the city limits are likely to become more and more black while the other schools in the Intervenors' Plan remain substantially all white.

In *Robinson v. Shelby County Board of Education,* 444 F2nd, 255, 258 (6th Circuit, 1971), the Court of Appeals for the Sixth Circuit held:

> " Where there has been a history of state imposed segregation of the schools, it is not sufficient to adopt a plan which, out of the context, might seem as nondiscriminatory but which does not do as much to disestablish segregation as an alternative plan which is feasible and pedagogically sound."

Intervenors submit that an analysis of the two plans leads to the following conclusions:

a. The Intervenors' Plan effectively eliminates one race schools while the County Board Plan presently has five substantially all white schools outside the city limits with the probability that the five elementary schools within the city limits will become substantially all black.

b. Witnesses considered the Intervenors' Plan as being better from an educational standpoint.

c. The difference in cost between the two plans is negligible.

d. The Board of Education never made an in depth study of the Intervenors' Plan and made no serious attempt to obtain the maximum possible degree of desegregation.

e. The Board of Education members supporting the County Board Plan reside outside the city limits of Moultrie and the Moultrie city limits are not natural dividing lines for dividing the system along racial lines.

f. The cost criteria urged by the Board to support the plan it adopted prior to August, 1971 was entirely erroneous.

g. The transportation problem is negligible.

In both *Wright v. Council of the City of Emporia*, ____ U.S. ____, 92 S.Ct. 2196 (1972) and *United States v. Scotland Neck City Board of Education*, ____ U.S. ____, 92 S.Ct. 2214 (1972), this court disapproved plants to convert dual system to unitary system where the plans appeared to be racially motivated, where a substantial racial disparity resulted in two groups of schools and impeded the dismantling of the dual school system.

This court, in *Green v. County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968), held that in desegregating a school system, it is incumbent upon the District Court to weigh the claim of the School Board in light of any alternatives which may be shown as feasible and more promising in their effectiveness. It held the availability to the Board of other more promising courses of action may indicate a lack of good faith and at least it places upon the Board a heavy burden to explain its preference for an apparently less effective method. Yet, the School Superintendent, in this case, testified the Board had not even made an in depth study of the Intervenors' Plan.

The record discloses that the witnesses who support the Respondent Intervenors' Plan are persons who have done their share to support public education in an integrated school system. Intervenors submit that their plan is designed to abolish a dual school system and to achieve a unitary system that is realistic and will work.

CONCLUSION

Intervenors respectfully submit that the Fifth Circuit Court of Appeals followed the decisions quoted herein of this court in determining that, under the facts of this case, the plan of the petitioner School Board was "clearly inadequate to constitute full compliance with *Swann* principles." Accordingly, Intervenors respectfully submit the petition for a writ should be denied.

Thomas K. Vann, Jr.

Frank T. Holt
Attorneys for Petitioner
Counsel for Respondents
E. E. Reid, Jr., et al.

Of Counsel:
Alexander, Vann & Lilly
August ____, 1972

CERTIFICATE OF SERVICE

I, Frank T. Holt, of counsel for Respondents E. E. Reid, Jr., et al., do hereby certify that I have this day served copies of the foregoing Brief of Respondents E. E. Reid, Jr., et al. in Opposition to Petition for Writ of Certiorari upon the following counsel for the parties, at the address shown, with sufficient postage attached for the delivery thereof: C. B. King, counsel for Wilma Joyce Harrington, et al.,

P. O. Box 1024, Albany, Georgia, Reuben H. Yancy, counsel for Franklin Sutton, et al., P. O. Bok 1507, Valdosta, Georgia, and James C. Whelchel, counsel for Colquitt County Board of Education, P. O. Box 768, Moultrie, Georgia.

This ____ day of August, 1972.

Frank T. Holt